IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.9395 OF 2004

Mr.V.B.Nighot for the Petitioner.

Mr.S.B.Deshmukh for the Respondent.

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| Office Notes, Office Memoranda of Coram, appearances, Court's order or directions | Court's or Judge's orders |
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| | **CORAM: D.K.DESHMUKH, J.** |
| | **DATED:** 4TH MAY,2005 |

P.C.:

Rule. Returnable forthwith. Heard finally by consent of parties.

1. One of the consideration that weighed with the trial court in not granting custody of the minor children to the Petitioner is " It is also admitted fact that for the last two years the Respondent (Petitioner in Writ Petition) has been staying separately from the Petitioner (Respondent in Writ

Petition) and both children." The learned Counsel for the Petitioner points out, which the Respondent is not in a position to dispute, that according to the Respondent the Petitioner left her house in October, 2003. Therefore in August, 2004 when the Court passed the order the court could not have said that admittedly the Respondent is residing separately for last two years. It is obvious that the order suffers from non-application of mind. Therefore the impugned order is set aside. The trial court is directed to rehear the application for custody filed by the Petitioner and decide it in accordance with law and on the basis of the material available on record.

Rule made absolute. No order as to costs.

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